

**DISTRICT COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. CROIX**

PORT HAMILTON REFINING &  
TRANSPORTATION, LLLP,

Plaintiff,

vs.

NATIONAL INDUSTRIAL SERVICES, LLC,

Defendant.

CASE NO.: 1:24-CV-00023

ACTION FOR TEMPORARY  
RESTRAINING ORDER,  
PRELIMINARY INJUNCTION, AND  
PERMANENT INJUNCTION

**DEFENDANT, NATIONAL INDUSTRIAL SERVICES, LLC'S  
MOTION FOR LEAVE TO FILE SUR-REPLY TO  
PLAINTIFF'S REPLY TO THE OPPOSITION TO THE EMERGENCY MOTION TO  
EXTEND TEMPORARY RESTRAINING ORDER**

Defendant National Industrial Services, LLC ("NIS") requests that the Court enter an Order allowing it to submit a brief sur-reply to Plaintiff's Reply in Support of its Motion to Extend Temporary Restraining Order (Doc. 13). In support of this motion, NIS says as follows:

1. On September 25, 2024, NIS filed an Opposition to Plaintiff's Motion to Extend Temporary Restraining Order (Doc. 12). That Opposition was concise and to the point; it made plain that Plaintiff's Motion for Extend the Temporary Restraining Order issued by the Superior Court was an attempt to do an end-run around the Bankruptcy Court's jurisdiction and the Asset Purchase Agreement.
2. On September 25, 2024, Plaintiff submitted an eight (8) page Reply to NIS's Opposition. (Doc. 13). Although styled as a "reply," Plaintiff's submission is a combination of baseless ad hominem attacks and the introduction of entirely new arguments in violation of the Federal and Local Rules. It does far more than just reply to NIS's arguments; it raises new facts and arguments that far exceed the scope of a proper reply. For example, Plaintiff

attaches the “declarations” of their own counsel and of Fermin Rodriguez arguing facts that it has never argued previously. Specifically, stating that NIS has not attempted to secure its scaffolding and that if they did, a work permit would be issued for them to do so. See, *Declaration of Fermin Rodriguez*, at ¶4-8. Both statements are unequivocally false. PHRT includes these false declarations in an attempt to now accuse NIS of “gamesmanship.” Likewise, Plaintiff fails to inform the Court that it is *Plaintiff’s* heavy burden to prove extraordinary relief is appropriate and raises for the first time that it is only willing to post a \$2,000.00 bond in order to stop NIS controlling and protecting over \$8,000,000.00 of NIS’s property. Like its attempt to circumvent the bankruptcy court, this new effort by Plaintiff should not be rewarded.

3. Pursuant to Rule 7.1(a) of the Local Rules of Civil Procedure, “only a motion, a response in opposition, and a reply may be served on counsel and filed with the Court; further response or reply may be made only by leave of Court before filing.” However, it is appropriate to grant a sur-reply to allow the non-moving party the opportunity to respond to arguments raised for the first time in the movant’s reply. See, e.g., *Carlins v. Board of Directors of Gallows Point Condominium Corp.*, 2004 WL 3222762, at \*2 (D.V.I. Nov. 29, 2004). See also *Amlin Underwriting, Ltd. v. Caribbean Auto Mart of St. Croix, Inc.*, 2010 WL 3825106 (D.V.I. September 28, 2010). Because Plaintiff, for the initial time in its Reply, raised arguments, what NIS has and has not done to attempt to secure its scaffolding, the amount of the bond, and wholly new evidence, and Plaintiff’s responses to their requests to do so, NIS is entitled to a sur-reply to address those arguments. NIS respectfully requests that this Court not let NIS Plaintiff’s counsel’s attempts at using folksy

colloquialisms to distract from its attempt to circumvent the rules of pleadings, and allow NIS to file a sur-reply.

Respectfully submitted,

Dated: September 26, 2024

/s/Kevin F. D'Amour  
KEVIN F. D'AMOUR, ESQ.  
VI Bar No. 288  
BARNES, D'AMOUR & VOGEL  
P.O. Box 224589  
St. Croix, VI 00822  
Tel: (340) 773-2785/Fax: 774-8189  
[kdamour@usvilawfirm.com](mailto:kdamour@usvilawfirm.com)  
*Attorneys for Defendant, National Industrial  
Services, LLC*